

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHNAS ORTIZ,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-206-SLR
)	
NEW CASTLE COUNTY DEPARTMENT)	
OF PROBATION (THOMAS LUNT),)	
CIVINGENICS, INC. (RUSSELL)	
BUSKIRK), DEPARTMENT OF HEALTH)	
AND SOCIAL SERVICES (DIRECTOR),)	
)	
Defendants.)	

STATE DEFENDANTS' ANSWER TO THE COMPLAINT

COME NOW State Defendants, Department of Health and Social Services (“DHSS”) Defendants¹ and Thomas Lunt (“Answering Defendants”), by and through their undersigned counsel, and hereby answer the Complaint as follows:

I. Previous Lawuits

A. Answering Defendants are without sufficient information to admit or deny the allegations set forth in this paragraph of the Complaint.

II. Exhaustion of Administrative Remedies

- A. Admitted.
- B. Denied.
- C.

¹ It is unclear from the Complaint who Plaintiff is attempting to name as a defendant. The caption names the “Department of Health and Social Services (Director)”. The appropriate title for this position is Secretary. The body of the Complaint names the “Director - Mental Health” as a defendant. The appropriate title is Director of Division of Substance Abuse and Mental Health. The State Defendants Answer without waiving any available service defenses.

1. Denied that the plaintiff filed "DOC" grievances. As to portion referring to DHSS, Answering Defendants are without sufficient information to admit or deny the allegations as set forth. The remaining allegations are not directed to Answering Defendants and no response is required. To the extent that a response is required, the allegations are denied.

2. Denied as to portion referring to DOC. As to the portion referring to DHSS, Answering Defendants are without sufficient information to admit or deny the information as set forth. The remaining allegations are not directed to Answering Defendants and no response is required. To the extent that a response is required, the allegations are denied.

III. Defendants

(1) Admitted that Defendant Thomas Lunt is employed as a probation officer with the New Castle County Department of Probation with the mailing address of 26 Parkway Circle, New Castle, DE 19720.

(2) Answering Defendants are without sufficient information to admit or deny the allegations as set forth in this section of the Complaint

(3) Admitted that there is a Director of the Division of Substance Abuse and Mental Health at DHSS. Admitted that the address for the central DHSS office is 1901 N. Dupont Highway, New Castle, Delaware, 19720.

IV. Statement of Claim

1. Answering Defendants are without sufficient information to admit or deny the allegations as set forth in this paragraph of the Complaint.

2. The allegations in this paragraph state a legal argument or conclusion to which no response is required. The allegations in this paragraph are not directed to Answering Defendant and no response is required. To the extent that an answer is required, the allegations set forth in this paragraph are denied.

3. As to the first three sentences of the paragraph, Answering Defendant is without sufficient information to admit or deny the allegations as set forth. As to the remaining portion of the paragraph, the allegations state a legal argument or conclusion to which no response is required. To the extent that an answer is required, the allegations are denied.

V. Relief

1. It is specifically denied that Plaintiff is entitled to compensatory, nominal, or any monetary damages. It is specifically denied that Plaintiff is entitled to declaratory, injunctive or any other relief.

AFFIRMATIVE DEFENSES

3. Plaintiff has failed to state a claim upon which relief can be granted.

4. Plaintiff has failed to exhaust his administrative remedies.

5. State Defendants are immune from liability under the Eleventh Amendment.

6. State Defendants are entitled to qualified immunity.

7. As to any claims under state law, State Defendants are entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001 *et seq.*

8. As to any claims under state law, State Defendants are entitled to sovereign immunity in their official capacities.

9. State Defendants cannot be held liable in the absence of personal involvement for the alleged constitutional deprivations.

10. To the extent that Plaintiff seeks to hold State Defendants liable based on supervisory responsibilities, the doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

11. State Defendants, in their official capacity, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, State Defendants respectfully request the Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the State Defendants; (ii) awarding State Defendants their fees and costs; and (ii) granting such other and further relief as is just and proper.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Stacey Xarhoulakos
Deputy Attorney General
820 N. French Street, 6th floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us

Date: December 4, 2006

Attorney for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2006, I electronically filed *State Defendants' Answer to the Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on December 4, 2006, I have mailed by United States Postal Service, the document to the following non-registered participant:

Johnas Ortiz
SBI # 00305401
1301 E. 12th Street
Wilmington, DE 19801

/s/ Stacey Xarhoulakos
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us